

CHAPTER 9

APPEALS FROM ACTIONS OF THE PLANNING DIRECTOR

1-9-1 Applicability.

(a) An applicant may petition to appeal an action of the Director in the administration of the Comprehensive Zoning and Subdivision Ordinance as provided for in Chapter 8 [Articles 17, 18, 19, 24, and 28] and Chapter 9 [Articles 3 and 5] of the Kauaʻi County Code, as Amended, 1987]. Intervention, pursuant to Chapter 4 of these Rules, shall not be allowed in applicant appeals from actions of the Director.

[(b) Pertaining to any Shoreline Setback Determination, Approval, Denial or Determination of Inapplicability by the Director, any person may petition to appeal an action of the Director in the administration of the Comprehensive Zoning ordinance as provided for in Chapter 8, Article 27 of the Kauaʻi County Code.]

(b) Any person who can show that a direct probable harm to his or her person or his or her property interest, or probable public harm could occur from the decision may petition to appeal any Shoreline Setback Determination, Approval, Denial or Determination of Inapplicability by the Director pursuant to Chapter 8, Article 27 of the Kauaʻi County Code.

1-9-2 Submission of Appeal.

(a) Time for Filing. Petitions to appeal an action of the Director shall be submitted and filed with the Clerk of the Commission.

- (1) For appeals of the Director's actions pursuant to the Comprehensive Zoning Ordinance, petitions shall be filed no later than thirty (30) days after the date of the Director's decision or service of the Order.
- (2) For appeals of the Director's actions pursuant to the Subdivision Ordinance, petitions shall be submitted no later than fifteen (15) days after date of the Director's decision or service Order.
- (3) For appeals of any Shoreline Setback Determination, Approval, Denial or Determination of Inapplicability by the Director pursuant to Chapter 8, Article 27 of the Kauaʻi County Code, petitions shall be filed no later than thirty (30) days after the date of the Commission meeting that the Director notifies the Commission of the Director's decision.

(b) Contents of a Petition for Appeal. The petition to appeal shall contain the following:

- (1) The name, address and telephone number of the appellant.
- (2) The identification of the property and the appellant's interest therein.
- (3) The particular provision of the zoning ordinance or subdivision ordinance or regulation in question.
- (4) All pertinent facts.
- (5) The action of the Director.
- (6) The reasons for the appeal, including a statement as to why the appellant believes that the Director's action was based on an erroneous finding of a material fact, or that the Director had acted in an arbitrary or capricious manner, or had manifestly abused his discretion.

1-9-3 Contested Case Hearing and Notice. If a petition contains the requirements prescribed in 1-9-2(1)-(6), the Director shall place the matter on the Commission agenda and the Commission shall afford the appellant an opportunity to be heard. Such Contested Case Hearing shall be conducted in conformity with the applicable provisions established herein for Contested Case hearings before the Commission in Chapter 6 of these Rules.

1-9-4 Commission Action.

(a) In cases where appeals are pursuant to the provisions of the Comprehensive Zoning Ordinance, the Commission shall consider the same within sixty (60) days of the filing of the notice of appeal. In the case where the Commission hears the matter, it must render a decision within thirty (30) days after the close of Hearing. In the case where a Hearing Officer is appointed, the Commission must act on its recommendation within thirty (30) days after receipt of the Hearing Officer's recommendation.

(b) In cases where appeals are pursuant to the provisions of the Subdivision Ordinance, the Commission shall consider the same within forty-five (45) days of the filing of the notice of appeal. In the case where the Commission hears the matter, it must render a decision within forty-five (45) days after the close of Hearing. In the case where a Hearing Officer is appointed, the Commission must act on its recommendation within thirty (30) days after receipt of the Hearing Officer's recommendation.

(c) A longer period to rendering any decision in Sections 1-9-4 (a) and (b) may be permitted by agreement of the applicant.

1-9-5 Decision and Order. The Director shall promptly notify the appellant of the decision of the Commission. If the Commission affirms the action of the Director, such order shall be accompanied by separate findings of fact and conclusions of law. A copy thereof shall be sent, return receipt, immediately to the ~~[applicant]~~ appellant.